

**Local 1131, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and Universal Engineering Division, Houdaille Industries, Inc. Case 7-CB-5459**

29 February 1984

## DECISION AND ORDER

BY CHAIRMAN DOTSON AND MEMBERS  
HUNTER AND DENNIS

On 9 August 1983 Administrative Law Judge Martin J. Linsky issued the attached decision. The Respondent filed exceptions and a supporting brief.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

## ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Local 1131, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Vassar, Michigan, its officers, agents, and representatives, shall take the action set forth in the Order.

<sup>1</sup> With its exceptions and supporting brief, the Respondent filed a motion to reopen the record for the introduction of new evidence on the issue of its reliance on Board law with respect to the granting of superseniority to union officials at the time of its actions referred to in the complaint, or, in the alternative, to accept as part of the record herein the proffered affidavit of Leonard Page, associate general counsel, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), on the same issue. We deny the motion to reopen the record but grant the alternative motion to accept the affidavit of Leonard Page as part of the record. However, having considered the affidavit, we find that it does not affect our decision.

## DECISION

### STATEMENT OF THE CASE

MARTIN J. LINSKY, Administrative Law Judge: This case arose upon a charge filed by Universal Engineering Division, Houdaille Industries, the Charging Party or the Employer, on April 30, 1982. An amended charge was filed June 7, 1982. The complaint, which issued on June 15, 1982, alleges that Local 1131, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), the Respondent, violated Section 8(b)(1)(A) and Section 8(b)(2) of the National Labor Relations Act, herein the Act, by insisting on giving full force and effect to a provision of the col-

lective-bargaining agreement between the Respondent and the Employer, which provides for granting superseniority for purposes of layoff and recall to the financial secretary of the Respondent, i.e., Tommy Thurman.

The Respondent denies the commission of any unfair labor practices. A hearing was held on March 2, 1983, in Burton, Michigan.

On the entire record in this case, to include post-hearing briefs filed by the General Counsel and the Respondent, and on my observation of the demeanor of the witnesses, I make the following

## FINDINGS OF FACT

### I. JURISDICTION

Universal Engineering Division, Houdaille Industries, Inc., is, and has been at all times material herein, a corporation organized and existing under the laws of the State of Delaware.

At all times material herein, the Employer has maintained its principal office in Frankenmuth, Michigan. The parent corporation of the Employer, Houdaille Industries, Inc., has its principal office and place of business in Ft. Lauderdale, Florida. The Employer is, and has been at all times material herein, engaged in the manufacture, sale, and distribution of machine tool accessories and related products. The Employer's plant in Frankenmuth, Michigan, is the only facility involved in this proceeding.

During the past 12 months, a representative period, the Employer, in the course and conduct of its business operations, purchased and caused to be transported and delivered to its Frankenmuth plant goods and materials valued in excess of \$50,000, which were transported and delivered to its plant in Frankenmuth, Michigan, directly from points located outside the State of Michigan. The Employer is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

### II. THE LABOR ORGANIZATION INVOLVED

Local 1131, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), is and has been at all times material herein a labor organization within the meaning of Section 2(5) of the Act.

### III. THE ALLEGED UNFAIR LABOR PRACTICE

The sole issue in this case is whether or not Section 8(b)(1)(A) and (2) of the Act are violated if Tommy Thurman, the Respondent's financial secretary, is accorded superseniority as provided for in the collective-bargaining agreement between the Respondent and the Employer. Since the hearing in this case the Board has issued its decisions in *Gulton Electro-Voice, Inc.*, 266 NLRB 406 (1983), and *Auto Workers Local 561 (Scoville)*, 266 NLRB 852 (1983). Applying the facts in this case to the law as enunciated in those two decisions I must conclude that the Respondent in maintaining and enforcing a clause in its collective-bargaining agreement with the Employer granting superseniority for purposes of layoff

and recall to its financial secretary violated Section 8(b)(1)(A) and (2) of the Act.

On March 6, 1981, the Employer and the Respondent entered into a collective-bargaining agreement with respect to the Employer's production and maintenance workers. This agreement, by its terms, expires on March 5, 1984. Article V, section 21 of the current agreement provides:

The President, Vice President, Financial Secretary, Recording Secretary and Trustees of the Local Union, members of the bargaining committee and District Stewards on all shifts shall carry top seniority during their terms of office, and, upon completing their term of office, shall revert to their former standing in their seniority list. The President and Financial Secretary during their term of office shall have preference to the first shift. After their term of office they will revert to their former shift. Such preferential seniority shall not apply for purposes of promotion.

In June 1980, production and maintenance employee Tommy Thurman was elected financial secretary of Local 1131. In addition to being the elected financial secretary, he also took on the duties of treasurer. The treasurer is not accorded superseniority under the collective-bargaining agreement. In March 1982, the Employer, after experiencing a decrease in production and maintenance work, determined that five turret lathe "A" machinists would have to be laid off from that job classification. On March 15, 1982, the Employer notified the five least senior turret lathe "A" machinists that they would be laid off from that classification as of March 19, 1982. One of the employees to receive such notice was Thurman. Immediately after receiving his layoff notice, Thurman filed a grievance claiming that he, as financial secretary of Local 1131, was entitled to superseniority under article V, section 21 of the contract. On March 16, 1982, the Employer retracted Thurman's layoff notice and issued a layoff notice to the sixth least senior turret lathe "A" machinist, Lester Bender. Upon receiving his layoff notice, Bender filed a grievance claiming that the grant of superseniority to the financial secretary violated Federal law. On March 17, 1982, the Employer retracted Bender's layoff notice, reissued a layoff notice as to job classification to Thurman and on April 30, 1982, filed the unfair labor practice charge that ultimately led to the instant proceeding.

I find that when Thurman, an officer and agent of the Respondent, invoked the superseniority clause on March 15, 1982, this started the running of the 6-month 10(b) period. Accordingly, since the charge and amended charge were filed in April and June 1982, respectively, this unfair labor practice case is not barred by Section 10(b). *Auto Workers Local 561 (Scoville)*, 266 NLRB 952 (1983).

For the benefit of the parties and the Board in the event exceptions are taken to my decision, I will set out in some detail the duties of the Respondent's financial secretary. In addition, I note that I have credited in its entirety on demeanor and inherent reasonableness the

testimony of Tommy Thurman, Ted Binnall, Richard Sears, and Harold Bauer. All four are union officials and testified in the Respondent's case.

Article 40, sections 4-11 of the UAW constitution sets forth the duties of UAW Local Union financial secretaries:

#### Financial Secretary

Section 4. It shall be the duty of the Financial Secretary to receive all dues, initiation fees, readmission fees, fines and all other income of the Local Union for any fund from any source and to give official receipts for same, as provided in this Constitution. Financial Secretaries of Local Unions having a check-off arrangement shall issue one (1) receipt for the check received from the company, and otherwise use the procedure outlined above for any other income. No receipt shall be issued to individual members unless the company does not show on the check stub or pay envelope the amount of the deduction and the reason therefore.

Section 5. The financial Secretary shall write all checks drawn on the Local Union funds and report in writing every month at a regular meeting of the Local Union giving the amount of monies received and paid out during the previous calendar month, divided as between the various income and expenditure classifications, and the remaining balances in the fund accounts of the Local Union.

Section 6. The Financial Secretary shall deposit all collections either with the Treasurer, taking a receipt therefor, or in such banks as Local Union Trustees may direct, with advice to the Treasurer as to the amount so deposited.

Section 7. The Financial Secretary shall by the 20th of each month, send a report to the International Secretary-Treasurer on blanks furnished by the International Union, together with the correct amount of money due the International Union for the preceding month which begins on the first and ends with the last day of the month. S/He shall receive applications for membership and notify the candidates of their election or rejection. S/He shall assist the International Union in seeing that all members receive the official publication regularly when eligible, provide each member with an official receipt for all monies paid and make available to each member a copy of the International Constitution and Bylaws of the Local Union. Union membership cards and/or dues buttons may be issued at the option of the Local Union.

Section 8. The Financial Secretary shall furnish the International Secretary-Treasurer with the names and addresses of all the officers of the Local Union. S/He shall keep a record of all members initiated, suspended, expelled or deceased, transfers in and out and reinstatements, during her/his term of office and notify the International Secretary-Treasurer of same, and perform such other duties as the bylaws prescribe or the Local Union may direct. There

shall be maintained by the Financial Secretary a complete record of all active members of the Local Union. This record shall have the date of initiation, the date and cause of suspension or expulsion, the date of reinstatement, together with the date of death, home address and such other matters as may be deemed necessary to keep a record of the continuous membership of a member of the Local Union.

The Financial Secretary shall not make said record of all active members (membership list) available to anyone except pursuant to the provision of Article 37, Section 10 of this Constitution.

Section 9. The Financial Secretary shall keep an inventory of all records and property of the Local Union, the same to contain, when possible, date of purchase and amount paid for each article. S/He shall notify all members in arrears of the amount of their indebtedness and turn over her/his books to the Trustees for audit and approval when called to do so. S/He shall, on the demand of the International Secretary-Treasurer, produce her/his books for examination and audit, and shall comply with the provisions of this Constitution.

Section 10. Should it be proven that any Local Union Financial Secretary has willfully and intentionally failed to report monthly the full membership of his/her Local Union to the International Secretary-Treasurer or should it be proven that any Local Union President, Treasurer and/or Financial Secretary willfully and intentionally refuses to sign a check to send in the full amount of per capita tax on the same number of members who have paid dues to the Local Union, the Local Union may be suspended from all privileges and benefits until the deficiency is made good and the officer or officers responsible for such failure shall not be allowed to again hold office in the organization for a period of two (2) years.

#### Treasurer

Section 11. The Treasurer shall give a receipt for all monies received from the Financial Secretary. The monies received must be deposited in such bank as the Local Union Trustees may direct for the several funds provided for in this Constitution and such other funds as the Local Union may set up in the name and number of the Local Union. S/He shall sign all checks, which must be countersigned by the President. S/He shall report in writing every month at a regular meeting of the Local Union the total receipts and total expenditures for the Local Union for the previous calendar month and the amount of money still on deposit. The Treasurer shall deliver to her/his successor all monies and other property of the Local Union. S/He shall, on demand of the International Union or Trustees of the Local Union, produce her/his books for examination and audit.

The financial secretary records and reports all income and expenditures of the local union; he drafts monthly reports to the membership and to his regional director;

he operates the voucher system for all expenditures of union funds; he prepares quarterly reports for the Local's trustees, the International Union, and state and Federal governments; he prepares annual LM-1A and LM-3 reports required by the Department of Labor and Federal law under penalty of criminal fines of \$10,000 or imprisonment for not more than 1 year or both (29 U.S.C. § 431, 432, and 439); he computes and forwards the Local's per capita tax to the International Union; he computes and forwards the Local's strike fund contribution, and other fund contributions, as well as the Local's share of the monthly dues receipts; he maintains the Local's membership records, including each member's name, address, social security number, date of the initiation, and amount paid, honorable withdrawal cards, and other information; he maintains the union's property, negotiates the lease for its hall, and pays the union's bills; he handles lost time payments for all persons carrying out official union business; he pays the union's share of the cost of arbitration.

The financial secretary in the instant case also directly administers two provisions of the collective-bargaining agreement, i.e., the union-security clause and the dues-checkoff clause. I credit Thurman's testimony that he alone of the Respondent's officers and stewards is responsible for administering and monitoring the contractual provisions covering these two mandatory bargaining subjects.

Thurman's obligations as financial secretary bring him in contact with employees on the shop floor, as well as management. First, Thurman's presence on the job allows him to sign up new members thereby enforcing in part the union-security clause. He also signs up employees for dues checkoff and delivers these forms to Vera Kern, the secretary to Roland Schneider, the Employer's industrial relations manager.

Vera Kern is the only management representative with whom Thurman dealt in connection with his enforcement of the union-security and dues checkoff provisions of the contract. I credit Thurman's testimony that he met with Kern for upwards of 1 hour per month at the plant at a time when she was working but he was not "on the clock" working for the Employer. On occasions, but very frequently, Thurman would meet with Kern during his working hours. In fulfilling his duties under these two clauses of the contract, e.g., meeting new employees to solicit and accept membership applications, Thurman met with employees and as a matter of convenience these meetings took place at the plant although they could have taken place elsewhere.

It is noted that the job of financial secretary is a fairly difficult one to learn, e.g., Thurman credibly testified that it took him over 1 year to learn the job sufficiently well to be comfortable in it. UAW International Representative Ted Binnall credibly testified about the difficulties of training financial secretaries and the harm which would result to the union from a constant turnover of financial secretaries. Binnall also stressed the important role the union-security and dues checkoff provisions of the contract have in maintaining the strength of the Union. Both Binnall and the Respondent's president,

Harold Bauer, pointed out that the Respondent's treasury has grown to \$69,000, largely as the result of the good work of the financial secretary in enforcing the union-security and dues checkoff provisions of the contract. These moneys enable the Respondent to administer and protect its contract rights more effectively by being able to afford to take cases to arbitration and pay for help if needed, as well as meeting other costs.

Thurman's duties as financial secretary also include major responsibilities in the handling of UAW strikes. During strikes, the financial secretary assigns various strike duties, directs strike captains and pickets, and sets up a strike kitchen. The financial secretary also handles the local's strike expenditures, and works with the International Union on the provision of strike benefits to employees.

Along with other officers of the Respondent, Thurman is a member of the Respondent's executive board. The Local 1131 bylaws provide that, between membership meetings, "the Executive Board shall be the highest authority of the Local Union and shall be empowered to act on behalf of the membership to the extent urgent business requires prompt and decisive action."

The executive board has authority and does make decisions regarding collective bargaining, including the development of demands for new contract negotiations. The executive board is the final authority on what bargaining demands are brought to the bargaining table to present to the Employer. During negotiations, members of the bargaining committee and the executive board confer daily in the plant although not required to do so, often during worktime, on the course of bargaining and what course should be taken by the Union. The executive board also recommends strike authorization and contract ratification.

Executive board decisions are taken at formal meetings every month during nonwork time. However, evidence at the hearing reflected that executive board decisions must often be made more urgently and, when the need for an urgent decision arises, only the input of those who are present in the shop is considered. There is sufficient time to poll executive board members not present in the plant. These polls have occurred during work hours, and I credit the testimony of union official Richard Sears that on at least six occasions in the past year such polling of executive board members, to include Thurman, occurred during working hours. Clearly, having Thurman present at work makes it more convenient for the executive board to function.

The executive board has involvement in contract administration and the grievance procedure. The executive board regularly reviews the handling of grievances, grievance settlements and withdrawals, and possible arbitrations. The executive board has the final authority to approve or disapprove the settlement of grievances and the withdrawal of grievances. The executive board also reviews every case before it approves or disapproves sending it to arbitration and, in each case that goes to arbitration, authorizes the expenditure of union funds necessary to arbitrate the grievance. In addition, the executive board has authority under article 33 of the UAW constitution to hear and decide any appeal from any

member from any decision of the Local Union or its agents on the disposition of any grievance.

On occasion the executive board has addressed matters concerning grievances at the plant but this has been done out of convenience to the board members and could have been done during off hours and away from the plant.

There was credible testimony that Thurman acts as the eyes and ears of the Respondent. Thurman credibly testified that he is approached daily by employees regarding grievances, negotiations, complaints about union handling of contract matters, and other related issues. Thurman hears these complaints or questions and tries either to answer them or explain the Respondent's position on a particular contract issue. He relays complaints or grievances to his fellow officers for action and, if he learns important information about grievances, he advises interested individuals accordingly. This activity takes place on the job. However, Thurman undertakes to do this because he views himself as leader of the Respondent and feels he should. It is not required activity on his part and another financial secretary might not do it. Further, any officer of the Union or any former officer of the Union or, for that matter, any plain member could conceivably undertake to do the same thing.

#### Legal Analysis

As noted above the Board has recently addressed the issue of superseniority for union officials in *Gulton Electro-Voice*, supra, and *Auto Workers Local 651* (Scoville), supra.

These were not the first occasions that the Board had considered this issue. In *Gulton*, the Board overruled *Electrical Workers UE Local 623 (Limpro Mfg.)*, 230 NLRB 407 (1977), enfd. sub nom. *D'Amico v. NLRB*, 582 F.2d 820 (3d Cir. 1978), and its progeny, which had expanded the concept of superseniority to cover more union officers or agents.

In *Gulton*, the Board announced that:

We will find unlawful those grants of superseniority extending beyond those employees responsible for grievance processing and on-the-job contract administration. We will find lawful only those superseniority provisions limited to employees who, as agents of the union, must be on the job to accomplish their duties directly related to administering the collective-bargaining agreement. [*Gulton*, supra at 409.]

The Board concluded in *Gulton* that "superseniority accorded to [union] officers who do not perform steward or other on-the-job contract administration functions is not permissible because it unjustifiably discriminates against employees for union-related reasons." *Gulton*, supra at 406.

Thurman is not a steward but is involved in three areas which the Respondent argues should result in his being legally entitled to superseniority, i.e., administration of the union-security and dues checkoff provisions of the collective-bargaining agreement between the Re-

spondent and the Employer, his services on the executive board, and his assumed union leadership role at the plant.

Thurman's duties in enforcing the union-security and dues checkoff clauses of the contract require him to get application forms and documents to new employees, get the completed documents back from them properly filled out, and collect initiation fees from new employees. However, these functions do not have to be performed at the plant. It is done at the plant for convenience purposes only. These contract administering functions also call for Thurman to meet with Vera Kern, the secretary to the Employer's industrial relations manager, for approximately 1 hour per month. These meetings generally occur when Thurman is at the plant but off the clock, i.e., just before or just after his shift. In addition, the Respondent and not the Employer compensates Thurman for his time in meeting with Kerns and performing his other duties as financial secretary. The Board concluded that the financial secretary's responsibility in *Gulton*, supra, for administering the dues withholding plan did not approach "the level of responsibility we believe is necessary to help stabilize Respondents' labor relations." *Gulton*, supra at 409. In *Gulton*, the financial secretary, who met monthly with the company's financial officer, was found not to be legally entitled to superseniority. In *Gulton*, the financial secretary's duties regarding contract administration were not significantly different from Thurman's contract administration duties in the instant case.

As a member of the Respondent's executive board Thurman has some impact of grievance handling as noted above but only as one of several members of the executive board, which could function without all its members being present. Further, the functioning of the executive board did not have to be performed on the job. It is interesting to note that the full membership could overrule the executive board regarding a grievance decision, e.g., whether to take a grievance to arbitration, so the full membership could conceivably claim a right to superseniority since it deals with grievance matters as well. Grievance processing to legally qualify for superseniority must involve grievance processing that has to be accomplished on the job.

Lastly, Thurman recognizes that he is a leader of the Union and has taken it on himself to be available to answer questions from the members regarding a host of matters, to include the status of grievances. This activity on Thurman's part will not justify the granting of superseniority status because it is not required to be done by him, is not required to be done on the job although for convenience purposes it often is, and it is the kind of activity that any union officer, e.g., outside guard; or former union officer might undertake.

It is my conclusion that Thurman did not perform steward or steward-like functions and did not perform sufficient on-the-job contact administration functions to justify being accorded superseniority under the test enunciated in *Gulton*, supra.

Accordingly, I find that, by the maintenance and enforcement of the superseniority clause with respect to the financial secretary on March 15, 1982, the Respondent violated Section 8(b)(1)(A) and (2) of the Act. In

reaching this conclusion I am mindful that Thurman was formerly a steward and would have been legally entitled to superseniority if he had remained a steward but having been promoted to a high union post with significant duties he loses his right to superseniority. The duties of the Respondent's financial secretary, although of critical importance to the Respondent and its membership, do not require the financial secretary's presence on the jobsite.

#### IV. THE REMEDY

Having found that the Respondent engaged in certain unfair labor practices, I shall recommend that they cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

I have found that the superseniority provision clause as it applies to the financial secretary is unlawful and shall therefore recommend that the Respondent cease and desist from maintaining or enforcing the superseniority clause in the collective-bargaining agreement with respect to the Respondent's financial secretary. Finally, I shall recommend that the Respondent cease desist in any like or related manner from restraining or coercing employees it represents in the exercise of the rights guaranteed employees by Section 7 of the Act.<sup>1</sup>

#### CONCLUSIONS OF LAW

1. Universal Engineering Division, Houdaille Industries, Inc. is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 1131, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW, is a labor organization within the meaning of Section 2(5) of the Act.

3. By maintaining and enforcing a seniority clause in its collective-bargaining agreement with the Employer which accords the Respondent's financial secretary superseniority, the Respondent has engaged in an unfair labor practice within the meaning of Section 8(b)(1)(A) and (2) of the Act.

4. The foregoing unfair labor practice is an unfair labor practice affecting commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended

#### ORDER<sup>2</sup>

The Respondent, Local 1131, International Union, United Automobile Aerospace, and Agricultural Imple-

<sup>1</sup> The Respondent argues that since an alleged essential party to this case, i.e., International Union, UAW, was not named as the Respondent, this case cannot be prosecuted. This argument is without merit because the International Union UAW is not an essential party but simply could have been a party to this action.

<sup>2</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

ment Workers of America (UAW), its officers, agents, and representatives, shall

1. Cease and desist from

(a) Maintaining, enforcing, or otherwise giving effect to those clauses in their collective-bargaining agreement with Universal Engineering Division, Houdaille Industries, Inc., according the Respondent's financial secretary superseniority for purposes of layoff or recall or for any other purpose.

(b) In any like or related manner restraining or coercing the employees of the Employer in the exercise of their rights protected by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its meeting halls copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>3</sup> If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO MEMBERS

POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT maintain and enforce any agreement with Universal Engineering Division, Houdaille Industries, Inc., according our financial secretary superseniority for the purposes of layoff or recall or any other purpose.

WE WILL NOT in any like or related manner restrain or coerce the employees of Universal Engineering Division, Houdaille Industries, Inc., in the exercise of their rights set forth above.

LOCAL 1131, INTERNATIONAL UNION,  
UNITED AUTOMOBILE, AEROSPACE, AND  
AGRICULTURAL WORKERS OF AMERICA  
(UAW)